

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No: 2,684,138: PAVERCAT  
Date of Issue: February 4, 2003



05-01-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

CATERPILLAR INC.

Petitioner,  
vs.

Cancellation No: 41,776

PAVE TECH, INC.

Registrant.

BOX TTAB

NO FEE

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

**ANSWER TO PETITION FOR CANCELLATION**

PAVE TECH, INC., a corporation organized and existing under the laws of the State of Minnesota ("Registrant"), located and doing business at 15354 Flag Ave. S., Prior Lake, Minnesota 55372, answers the Petition for Cancellation of CATERPILLAR INC. ("Petitioner"), as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of the Petition for Cancellation and therefore denies such allegations.
2. Registrant, in answer to Paragraph 7 of the Petition for Cancellation, admits that it has obtained Registration No. 2,684,138, February 4, 2003, for its trademark PAVERCAT for use on machines or machine parts used to aid in the installation of segmental pavers.
3. Registrant, in answer to paragraphs 8 and 9 of the Petition for Cancellation, admits the allegations contained in such paragraphs.
4. Registrant, in answer to paragraphs 10 and 11 of the Petition for Cancellation, denies each and every allegation contained in such paragraphs.

## AFFIRMATIVE DEFENSES

5. There is no likelihood of confusion, mistake or deception of the purchasing public between Registrant's mark and Petitioner's marks when considered in their entireties. Registrant's mark is distinctly different from Petitioner's marks in concept, sound and appearance.
6. The only common portion between Registrant's mark and Petitioner's marks is the word or three letter set "CAT." There are believed to be thousands of trademarks used and/or registered in the United States by third parties which include the word or three letter set "CAT" as part thereof. In addition, there are a number of pending applications for registration of marks which include the word or three letter set "CAT" at the U.S. Patent and Trademark Office. As a result of the proliferation of such third party usage, application and registration, the public has become accustomed to trademarks which include the word "CAT" as part thereof and Petitioner cannot, therefore, base any alleged similarity between its marks and the mark of Registrant on such common portion of the marks. The use of the word "CAT" is an adoption of a common word known and used in the sale and distribution of many products, some of which involve wheeled and track-type vehicles used for recreation, construction and other purposes. Petitioner cannot validly assert an alleged confusing similarity between Registrant's and Petitioner's mark based on such a common word. Furthermore, the aforementioned proliferation of marks which include the word "CAT" serves to narrow the scope of protection to which Petitioner's mark is entitled and forecloses Petitioner's right to bar Registrant's use and/or registration of its mark PAVERCAT.
7. The respective marks of Petitioner and Registrant do not look alike, sound alike or have any similarity in normal meaning sufficient to cause any reasonable likelihood of confusion, mistake or deception as to origin.
8. The goods of the parties are sold through different channels of trade to different ultimate purchasers and are used for different purposes. Respondent does not manufacture, distribute or sell any goods which are known to be competitive with any goods manufactured, distributed or sold by Petitioner.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed.

PAVE TECH, INC.

By: 

Michael J. O'Loughlin

Attorney at Law

1012 Grain Exchange Bldg.

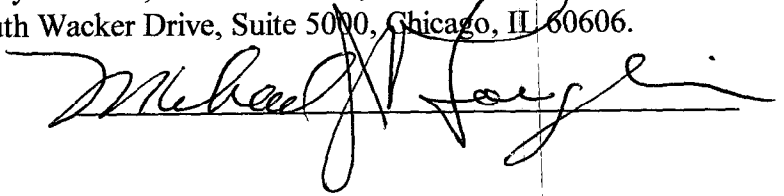
400 South Fourth Street

Minneapolis, MN 55415

Telephone: (612) 332-0351

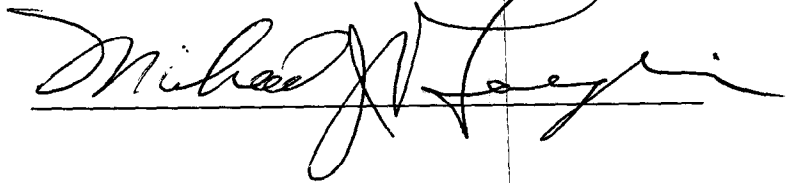
### CERTIFICATE OF SERVICE

One copy of the foregoing ANSWER TO PETITION FOR CANCELLATION has been mailed in a postage prepaid envelope deposited in a box under the custody of the U.S. Postal Service this 28 day of April, 2003 to Mary E. Innis, PATTISHALL, MCAULIFFE, NEWBURY HILLIARD & GERALDSON, 311 South Wacker Drive, Suite 5000, Chicago, IL 60606.

A handwritten signature in cursive script, appearing to read "Michael J. Feyn", written over a horizontal line.

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on April 28, 2003.

A handwritten signature in cursive script, appearing to read "Michael J. Feyn", written over a horizontal line.

TTAB

**MICHAEL J. O'LOUGHLIN & ASSOCIATES, P.A.**  
**ATTORNEYS AT LAW**  
**400 SOUTH 4th STREET**  
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**MINNEAPOLIS, MINNESOTA 55415**

332-0351  
AREA CODE 612  
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April 28, 2003

Assistant Commissioner for Trademarks  
BOX TTAB/ NO FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513



05-01-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Re: Caterpillar Inc. v. Pave Tech, Inc.  
Registration No. 2,684,138  
Cancellation No. 41,776

Dear Sir:

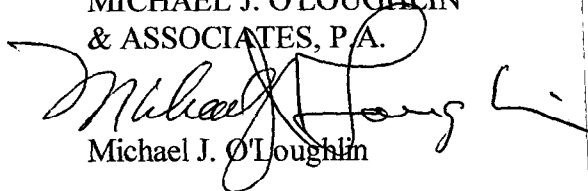
Enclosed herewith are the following documents submitted in connection the above-identified Cancellation proceeding:

- a. Answer To Petition For Cancellation;
- b. A stamped pre-addressed postcard.

Please stamp the postcard with the date of receipt and return to me. Please write or call the undersigned at the above address if there are any questions or concerns.

Yours very truly,

MICHAEL J. O'LOUGHLIN  
& ASSOCIATES, P.A.

  
Michael J. O'Loughlin

MJO/jfb  
Enclosures  
cc: Stephen R. Jones

03 JUN - 5 PM '03  
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